

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

|                      |   |                            |
|----------------------|---|----------------------------|
| MARC VEASEY, ET AL., | ) | CASE NO: 2:13-CV-00193     |
|                      | ) |                            |
| Plaintiffs,          | ) | CIVIL                      |
|                      | ) |                            |
| vs.                  | ) | Corpus Christi, Texas      |
|                      | ) |                            |
| RICK PERRY, ET AL.,  | ) | Tuesday, September 2, 2014 |
|                      | ) |                            |
| Defendants.          | ) | (7:58 a.m. to 9:43 a.m.)   |

MOTION HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

|                         |   |
|-------------------------|---|
| Appearances:            | See Next Page   |
| Court Recorder:         | Genay Rogan   |
| Clerk:                  | Brandy Cortez   |
| Court Security Officer: | Adrian Perez  |
| Transcriber:            | Exceptional Reporting Services, Inc.<br>P.O. Box 18668<br>Corpus Christi, TX 78480-8668<br>361 949-2988 |

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APPEARANCES FOR:

Plaintiffs:

CHAD W. DUNN, ESQ.  
KEMBEL SCOTT BRAZIL, ESQ.  
Brazil and Dunn  
4201 Cypress Creek Parkway, Suite 530  
Houston, TX 77068

ARMAND DERFNER, ESQ.  
P.O. Box 600  
Charleston, SC 29402

J. GERALD HEBERT, ESQ.  
Attorney at Law  
191 Somerville Street #405  
Alexandria, VA 22304

NEIL G. BARON, ESQ.  
914 FM 517 Rd. W, Suite 242  
Dickinson, TX 77539

LUIS ROBERTO VERA, JR., ESQ.  
111 Soledad, Suite 1325  
San Antonio, TX 78205

EMMA P. SIMSON, ESQ.  
Campaign Legal Center  
215 E. Street NE  
Washington, DC 20002

Mexican American  
Legislative Caucus,  
et al.:

EZRA D. ROSENBERG, ESQ.  
Dechert, LLP  
902 Carnegie Center, Suite 500  
Princeton, NJ 08540-6531

MARK A. POSNER, ESQ.  
AMY L. RUDD, ESQ.  
LINDSEY COHAN, ESQ.  
JENNIFER CLARK, ESQ.  
Lawyers' Committee for Civil Rights  
1401 New York Ave. NW, Suite 400  
Washington, DC 20005

APPEARANCES FOR:

(CONTINUED)

United States  
of America:

RICHARD DELLHEIM, ESQ.  
ELIZABETH S. WESTFALL, ESQ.  
ANNA BALDWIN, ESQ.  
PAMELA CARLIN, ESQ.  
U.S. Department of Justice  
950 Pennsylvania Ave. NW  
Washington, DC 20530

BRUCE I. GEAR, ESQ.  
Department of Justice  
1800 G Street NW  
Washington, DC 20006

Ortiz Plaintiffs,  
et al.:

JOSE GARZA, ESQ.  
7414 Robin Rest Dr.  
San Antonio, TX 78209

ROBERT W. DOGGETT, ESQ.  
Texas Rio Grande Legal Aid, Inc.  
4920 North IH 35  
Austin, TX 78751

MARINDA VAN DALEN, ESQ.  
Texas RioGrande Legal Aid, Inc.  
531 E. St. Francis  
Brownsville, TX 78520

Texas League of Young  
Voters Education Fund:

RYAN HAYGOOD, ESQ.  
NATASHA KORGAONKAR, ESQ.  
NAACP Legal Def. and Educational Fund  
40 Rector St., 5th Floor  
New York, NY 10006

Also present:

Imani Clark

DANIELLE CONLEY, ESQ.  
KELLY DUNBAR, ESQ.  
Wilmer Cutler Pickering, et al.  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

APPEARANCES FOR:

(CONTINUED)

Texas Association of  
Hispanic County Judges  
and County  
Commissioners:

ROLANDO L. RIOS, ESQ.  
115 E. Travis  
Suite 1654  
San Antonio, TX 78205

Also present:

ROGER GALVAN, County Commission  
Calhoun County

State of Texas:

JOHN BARRET SCOTT, ESQ.  
Scott, Yung, L.L.P.  
208 N. Market Street  
Suite 200  
Dallas, TX 75202

JOHN REED CLAY, JR., ESQ.  
LINDSEY E. WOLF, ESQ.  
JENNIFER ROSCETTI, ESQ.  
G. DAVID WHITLEY, ESQ.  
STEPHEN L. TATUM, JR., ESQ.  
STEPHEN R. KEISTER, ESQ.  
Office of the Attorney General  
P.O. Box 12548  
MC001  
Austin, TX 78711

ARTHUR D'ANDREA, ESQ.  
Office of the Attorney General  
209 W. 14th Street, 7th Floor  
Austin, TX 78701

BEN A. DONNELL, ESQ.  
Donnell Abernethy Kieschnick  
555 N. Carancahua, Suite 400  
Corpus Christi, TX 78401

WHITNEY DEASON, ESQ.

1        Corpus Christi, Texas; Tuesday, September 2, 2014; 7:58 a.m.

2                                (Call to order)

3                **THE COURT:** Good morning. It's a little warm in  
4 here, but I think they're working on that. Court calls Cause  
5 Number 2-13-193, *Veasey, et al. versus Perry, et al.* The  
6 Plaintiffs will announce.

7                **MR. DUNN:** Good morning, your Honor. Chad Dunn on  
8 behalf of the Veasey/LULAC Plaintiffs. With me at counsel  
9 table is Armand Derfner. Also with me in the case is Jerry  
10 Hebert, Emma Simson, Luis Vera, Scott Brazil, and Neil Baron,  
11 who is dealing with a witness out of court.

12                **THE COURT:** Okay.

13                **MR. ROSENBERG:** Good morning, your Honor. Ezra  
14 Rosenberg from Dechert on behalf of the Texas State Conference  
15 of NAACP Branches and the Mexican American Legislative Caucus,  
16 Texas House of Representatives. With me are Mark Posner, Amy  
17 Rudd, Lindsey Cohan, Jenn Clark, and I think I have everyone  
18 right now.

19                **THE COURT:** Okay.

20                **MR. DELLHEIM:** Good morning, your Honor. Richard  
21 Dellheim for the United States. With me at counsel table is  
22 Elizabeth Westfall, Anna Baldwin, Pamela Carlin (phonetic), we  
23 have Bruce Gear and more to come.

24                **THE COURT:** I'm sure.

25                **MR. DELLHEIM:** Thank you very much.

1           **THE COURT:** Okay.

2           **MR. GARZA:** Jose Garza for the Ortiz Plaintiffs, and  
3 with me is Mr. Robert Doggett and Ms. Marinda Van Dalen. And  
4 I'm also here on behalf of the Mexican American Legislative  
5 Caucus.

6           **THE COURT:** All right.

7           **MR. HAYGOOD:** Good morning, your Honor. Ryan Haygood  
8 for the Texas League of Young Voters, and Imani Clark who joins  
9 me at counsel table with my colleague, Danielle Conley, Natasha  
10 Korgaonkar, and Kelly Dunbar.

11          **THE COURT:** Okay.

12          **MR. RIOS:** Good morning, your Honor. Rolando Rios  
13 for the Texas Association of Hispanic Judges and Commissioners.  
14 And along with me today is Commissioner Roger Galvan. He's the  
15 County Commissioner of Calhoun County.

16          **THE COURT:** Okay. Is that everyone on the  
17 Plaintiffs' side? All right. Defense?

18          **MR. SCOTT:** Your Honor, John Scott for the  
19 Defendants. We announce ready, along with Mr. Reed Clay,  
20 Arthur D'Andrea, Lindsey Wolf, Jennifer Roscetti, Whitney  
21 Deason (phonetic), David Whitley, Stephen Tatum, Ben Donnell,  
22 and Ron Keister.

23          **THE COURT:** All right. I guess that's everyone. I  
24 think the only thing we really need to address before we get  
25 going is there was a motion to compel filed by the Defendants

1 regarding a deposition of a Mr. Taylor. You all want to  
2 address that?

3 **MR. WHITLEY:** Good morning, your Honor. David --

4 **THE COURT:** Good morning.

5 **MR. WHITLEY:** -- Whitley for the Defendants.

6 Mr. Taylor was deposed about a month ago, maybe two months ago.  
7 The Defendants accommodated his request to delay his  
8 deposition; and after he sat for that deposition -- he sat for  
9 about two hours and then he walked out early after becoming  
10 highly agitated and actually hostile towards me. And frankly,  
11 I was surprised that he would be called as a witness at trial.  
12 And we feel strongly that he should be compelled to sit for the  
13 remainder of his deposition.

14 **THE COURT:** All right. Who's going to respond from  
15 the Plaintiffs?

16 **MR. DOGETT:** Robert Doggett, Mr. Taylor. Your  
17 Honor, first of all, Mr. Taylor is a Plaintiff in this case.  
18 His testimony has been designated. The State has cross-  
19 designated. This deposition occurred on July 18th. They have  
20 not requested that it be rescheduled until the day before.  
21 And, in fact, on page 65 of his deposition, the attorney for  
22 the State said they had two more questions. And now here we  
23 are the day before trial, they want to re-depose him. And  
24 obviously he's in a nursing home right now. He's going to  
25 appear at trial day after tomorrow, or I believe tomorrow.

1           **THE COURT:** Yeah, I guess why wasn't the deposition  
2 able to continue?

3           **MR. DOGGETT:** Well, your Honor, I mean, we can blame  
4 Mr. Taylor for that, but obviously I believe that the State,  
5 you know, in part provoked him and, you know, told him there  
6 was only two more questions. And, your Honor, all we're saying  
7 is that the State has known that he was going to testify in  
8 this case from the get-go. He was on the witness list. And  
9 Mr. Scott said in open court last week they had no objections  
10 for any of the witnesses, and here we are the day before trial  
11 and now they want to depose him again.

12           **THE COURT:** Okay. If the Plaintiffs plan to present  
13 him, then the Court's going to grant the motion to compel the  
14 deposition. You all need to figure out when you all are going  
15 to do that.

16           **MR. DOGGETT:** Your Honor, would it be two more  
17 questions or two more hours?

18           **THE COURT:** What do you need?

19           **MR. WHITLEY:** Just to clarify the record, your Honor,  
20 I believe the deposition testimony referenced a couple more  
21 questions. I was doing my best to calm Mr. Taylor and to put  
22 him at ease. A couple more questions should not be interpreted  
23 as two exactly. It was at that point that he chose to walk out  
24 of the deposition. So, your Honor, it --

25           **THE COURT:** How much time do you anticipate in the



1 deposition taking?

2           **MR. WHITLEY:** He sat for less than two hours. I  
3 believe that we are due seven under the rules. I do not  
4 believe that we need another five, but --

5           **THE COURT:** How much time do you need?

6           **MR. WHITLEY:** I think that another two hours would be  
7 great.

8           **MR. SCOTT:** Your Honor, probably less than an hour,  
9 easily less than an hour. So if we could have another hour to  
10 finish up his deposition, we'll be through.

11           **THE COURT:** We're going to cap it at an hour then.

12           **MR. WHITLEY:** Thank you, your Honor.

13           **MR. SCOTT:** Thank you.

14           **THE COURT:** All right. Okay, you all filed -- or  
15 provided an email to the Court regarding how objections were  
16 going to be addressed. If you all can just put that on the  
17 record just so that I am sure I understood that memo.

18           **MS. WOLF:** Good morning, your Honor. Lindsey Wolf  
19 for the Defendants. We've been engaging in lengthy good faith  
20 discussions with the Plaintiffs in terms of objections to  
21 exhibits and transcript designations, and we basically agreed  
22 that the Court need not address in advance of trial the bulk of  
23 the objections to the exhibits. We're going to present a few  
24 objections to the Court today. Some of those we're just going  
25 to put on the record that the documents are not being used for

1 the truth of the matter asserted. But Mr. Rosenberg would like  
2 to continue this statement. Go right ahead.

3 **MR. ROSENBERG:** Yeah, I'll put on the record, I don't  
4 have the -- with me the email that we sent to Ms. Cortez, but I  
5 do have an email that Ms. Wolf and I exchanged last night. Oh,  
6 I all of a sudden have the email that I sent to Ms. Cortez, so  
7 I'll read that one first and then read the email that was sent  
8 last night. The parties have conferred -- well, I should just  
9 preface -- the parties --

10 "number one, the parties agree that all exhibits and  
11 depositions/trial testimony designations on any party  
12 (indiscernible) are admitted into evidence with the  
13 opposing party's filed objections, except for those  
14 that are submitted to the Court for decision on  
15 Tuesday, as per paragraph 3 below. The parties will  
16 confer over the weekend to narrow the list of  
17 objections to those deemed to be central by the  
18 parties. Any -- number two --"

19 **THE COURT:** And can I just ask? So --

20 **MR. ROSENBERG:** Sure.

21 **THE COURT:** -- when you all are saying that's agreed  
22 to be admitted into evidence, you all are going to let the  
23 Court know or you all are going to read that into the record or  
24 present it or something, right? It's not just presenting --

25 **MR. ROSENBERG:** I think that will happen today is

1 that there are a handful of exhibits that will be either  
2 clarified as to the nature of the objections or the nature of  
3 the reservation of rights, and there are a dispute of -- as to  
4 another handful of exhibits. Other than that, everything would  
5 be deemed admitted, subject to the objections. And I think the  
6 best way to do this -- also in consideration of a couple  
7 supplemental trial exhibit lists that the parties haven't  
8 finalized, is that today I'm certainly prepared to move into  
9 evidence everything up to now, and then we will put together  
10 for the Court a complete list that takes out withdrawn exhibits  
11 and make sure that the Court has one final list. But that's  
12 going to take a few days, I think, to finalize.

13 **MS. WOLF:** And, your Honor, there is another issue  
14 which I think --

15 **THE COURT:** Can I just --

16 **MS. WOLF:** Of course.

17 **THE COURT:** -- follow up on that? I just want to be  
18 sure you all aren't going to say, okay, all this is admitted  
19 into the evidence and I'm not -- I'm going to have to read  
20 through all that. Or you all are going to present it during  
21 the trial?

22 **MR. ROSENBERG:** During the -- as per your Honor's  
23 instructions, during the trial we are going to highlight those  
24 exhibits that we believe are of particular importance. I think  
25 both sides have a fairly large group of exhibits that go beyond

1 what is going to be shown to the Court, just because of the  
2 time.

3           **THE COURT:** Okay. And I understand that. The  
4 problem is it's -- as I've said before, it's not really fair to  
5 the Court for you all just to admit, even if it's by agreement,  
6 a bunch of exhibits or a bunch of testimony and expect the  
7 factfinder to sort through that. That's not normally the way  
8 you would try your case to a jury. And I am the factfinder  
9 here. And as I said at the pretrial, as that case says, judges  
10 are not pigs looking for truffles --

11           **MR. ROSENBERG:** Certainly.

12           **THE COURT:** -- buried in evidence.

13           **MR. ROSENBERG:** And that's why we also, throughout  
14 our findings of fact, we identified with specificity those  
15 exhibits that we feel are of particular importance.

16           **THE COURT:** Okay, all right. You can proceed.

17           **MR. ROSENBERG:** "Number two, any objections made in  
18 open court or filed with the Court pretrial will be  
19 reviewed by the Court when it reviews the evidence  
20 with the obligation placed on the parties to  
21 highlight to the Court in open court any objections  
22 to specific exhibits or deposition/trial testimony  
23 that the party believes are of particular importance  
24 to it. Number three, the parties may raise with the  
25 Court such particular objections prior to the start

1 of evidence on September 2nd or the objection to the  
2 extent noted shall be carried. Number four, the  
3 above procedure would not apply to the deposition  
4 designations of the United States 30(b)(6) deposition  
5 or the deposition of Senator Robert Duncan, both of  
6 which were taken this past week, which the parties  
7 will raise with the Court to the extent necessary  
8 during the second week of trial. Nor does this  
9 procedure apply to certain fact stipulations.  
10 Defendants are in the process of working out with the  
11 Veasey, LULAC, Ortiz, and Young Voter Plaintiff  
12 groups to which the parties do not anticipate  
13 objections."

14 Pursuant to this, over the weekend the parties met  
15 and engaged in lengthy good faith discussions of their  
16 objections to exhibits and transcript designations and have  
17 agreed that the Court need not address in advance of trial  
18 almost all of them, those objections which we're not presenting  
19 to the Court in open court today, with the exception of  
20 objections the parties understand the Court has already ruled  
21 on, including for example Plaintiffs' Exhibit 817 and  
22 Plaintiffs' Exhibit 490 and certain exhibits, the parties have  
23 agreed they will not seek to introduce at trial or preserve.  
24 The parties are comfortable with the Court giving whatever  
25 weight, if any, it deems appropriate to any such exhibit or

1 transcript designation in light of said objections, including  
2 curing a hearsay objection on the basis that the document may  
3 be relevant other than for the truth of the matters asserted  
4 therein. There are a couple of categories of objections which  
5 the parties want to highlight. Number one, the parties have  
6 agreed that declarations set forth on the exhibit list may be  
7 admitted into evidence, so long as the witness, lay or expert,  
8 appears live at trial so as to be available for cross  
9 examination as to anything in the declaration. And this is not  
10 applied, of course, to the declarations that your Honor  
11 admitted into evidence last week. "Number two, the parties  
12 have agreed that academic literature may be admitted into  
13 evidence to the extent that an expert in his or her declaration  
14 or testimony indicates reliance on that academic literature,  
15 but not for the truth of the matters set forth in the  
16 literature." And I think with that, that takes care of the  
17 Geschalt (phonetic) agreement. And there are a few particular  
18 exhibits which Ms. Wolf and others may address. And I think I  
19 have one or two clarifications that we discussed. Thank you,  
20 your Honor.

21 **THE COURT:** All right.

22 **MS. WOLF:** And, your Honor, before I jump into the  
23 specific exhibits, I have a point of clarity which I think the  
24 Plaintiffs will also appreciate some clarity on in terms of how  
25 your Honor would like to proceed with documents that the

1 parties wish to submit under seal. There are some documents  
2 which contain personally identifying information which I can  
3 represent Defendants have gone through and redacted to the best  
4 of their ability that information. But I understand there's  
5 other exhibits for example that the United States has asked be  
6 submitted under seal. And so would your Honor prefer a  
7 separate drive that has the exhibits under seal, or how would  
8 your Honor like us to keep track of that for you so that you  
9 know --

10 **THE COURT:** Okay.

11 **MS. WOLF:** -- which exhibits we're seeking to seal?

12 **THE COURT:** Anything from the Plaintiffs on that?

13 **MS. WESTFALL:** I think a separate drive would be  
14 preferable.

15 **THE COURT:** Okay, that's fine.

16 **MS. WOLF:** And with that, your Honor, I will turn to  
17 the individual exhibits. I will address exhibits first that  
18 the Plaintiffs are seeking to get into evidence that the  
19 Defendants are taking -- would ask that your Honor address.  
20 And the first exhibit would be Exhibit PL-650. And we're not  
21 asking your Honor to rule on that exhibit. The caveat there,  
22 we would just like to note for the record that counsel for the  
23 Plaintiffs has represented that PL-650 will not be used for the  
24 truth of the matters asserted therein. It will be used to go  
25 to motive and state of mind.

1           **MR. HEBERT:** And, your Honor, we can confirm that's  
2 correct, 650.

3           **THE COURT:** Okay.

4           **MS. WOLF:** Your Honor, the next exhibit in the  
5 Plaintiffs exhibits would be the declaration of Mr. Buck Wood.  
6 And in connection with our objection to the admission of this  
7 particular affidavit, we also take objection to Mr. Wood  
8 presenting testimony in this matter. And the issues that we  
9 have -- and for your Honor's reference, this is PL-776 -- and  
10 for your Honor's reference, Mr. Wood gave a deposition in this  
11 case, and in that deposition, he testified to certain  
12 conversations that he had with members of the Texas legislature  
13 regarding the purpose of SB14. And in his declaration, he  
14 opined that it was the legislators purpose with SB14 to  
15 discourage turnout among minority citizens. When counsel for  
16 Defendants asked Mr. Wood to identify the specific legislators  
17 with whom he had spoken in order to form those opinions,  
18 Mr. Wood asserted the attorney-client privilege. And when  
19 counsel in the deposition pointed out to Mr. Wood that case law  
20 in the Fifth Circuit, under normal circumstances, does not  
21 protect the identity of an attorney's clients, Mr. Wood  
22 endeavored that he would sit on that and think about it and  
23 possibly provide the Defendants with the list of individuals he  
24 had spoken with. And the Defendants at that time reserved  
25 their right to reopen the deposition. We're sitting here at



1 the beginning of trial, we haven't received the list from  
2 Mr. Wood, and there's various case laws which state that the --  
3 we -- the courts are entitled to examine the reliability of  
4 sources, and if an expert fails to disclose the sources on  
5 which his opinion is based, the court is unable to conduct the  
6 necessary reliability review. And that's a Fifth Circuit case,  
7 *Viterbo versus Dow Chemical Co.*, 826 F.2d 420. And he also  
8 testified in his deposition that he was not relying on any  
9 documents; he was only relying on his personal knowledge. And  
10 so we would start with, your Honor, to ask that he not -- he be  
11 precluded from testifying at all because we don't have any data  
12 on which he relied.

13 **MR. DUNN:** Your Honor, good morning. Chad Dunn on --

14 **THE COURT:** Good morning.

15 **MR. DUNN:** -- behalf of the Veasey/LULAC Plaintiffs.  
16 Mr. Wood testifies to two basic topic areas, and I think it's  
17 important to keep that --

18 **THE COURT:** Okay, and who is he?

19 **MR. DUNN:** He -- Randall Buck Wood is an election  
20 lawyer from Austin, used to be Director of Elections in the  
21 late sixties and early seventies, and has practiced election  
22 law since then. He -- his two categories of testimony will be  
23 that there is essentially none -- or there is none voter  
24 impersonation that Senate Bill 14 would prevent. He testifies  
25 from the standpoint of somebody who has handled scores and

1 scores of election contests and investigations searching for  
2 voter fraud. On that subject, this discussion that Ms. Wolf  
3 raises before the Court is not even relevant as to his  
4 testimony and purpose. So we don't think he should be excluded  
5 there for any reason. He has unique experience, his training  
6 and education, experience make him an expert.

7 **THE COURT:** Okay. Is there an issue with the defense  
8 on that point? Because I didn't see where your objection would  
9 cover that issue.

10 **MS. WOLF:** Your Honor, I think there's a general  
11 objection given that he's not relying on any documents.  
12 However, our primary objection is with paragraph three of his  
13 report which relates to his experience with the Texas  
14 legislature.

15 **MR. DUNN:** And so turning to paragraph three -- and I  
16 should have mentioned the Section 5 court in D. C. heard from  
17 Mr. Wood, so this isn't new testimony to the State. But  
18 turning to paragraph three, Mr. Wood states that it's his  
19 opinion that Senate Bill 14 was adopted with a discriminatory  
20 intent, and he has several bases for that opinion. And one of  
21 the bases for that opinion was communications he had with  
22 members of the legislature that were only raised, frankly,  
23 because the State asked him about those communications. We  
24 have stipulated to the State that we will not ask Mr. Wood  
25 about his communications with legislators. And to the extent

1 he gets into testimony about intent behind SB14, the only  
2 rationale or examples he will give for having formed such an  
3 opinion will be other rationales that were asked about at the  
4 deposition; not his communications with his clients. So we  
5 thought that was sufficient to resolve the issue.

6 **THE COURT:** All right, Ms. Wolf?

7 **MS. WOLF:** Your Honor, our understanding is that in  
8 terms of this particular subject area, Mr. Wood primarily  
9 relied on those particular conversations, and so we don't think  
10 that it would be fair for Mr. Wood to be able to make a general  
11 statement or opinion and only provide certain sources which  
12 clearly he testified factored into his decision on this  
13 particular paragraph three in his affidavit.

14 **THE COURT:** Okay, Defendants' objection is overruled.

15 **MS. WOLF:** Thank you, your Honor. Your Honor, the  
16 next group of Plaintiffs' exhibits which are before the Court  
17 are exhibits PL-1086 and PL-1087, and I was able to confer  
18 again with counsel this morning on those exhibits. Those I  
19 understand are summary documents which were attached to an  
20 expert report in the last case which is not being submitted in  
21 this case. And it's my understanding that counsel would like  
22 to revisit those issues with us, so if it's okay with your  
23 Honor, we'd like to address that, if at all, at a later date.

24 **THE COURT:** Okay.

25 **MS. WOLF:** And moving on to Defendants' exhibits that

1 we are still seeking to admit into the record, the first of  
2 those exhibits is Defendants' 456. This is a file from one of  
3 the county commissioners, Ms. Carolyn Guidry (phonetic). And  
4 for your Honor's sake, this is a 600-page document so -- and in  
5 the interest of avoiding the Court having to review 600 pages,  
6 I've agreed with Mr. Hebert that we're going to, again, try and  
7 cull down what exactly it is we want to use from that document,  
8 so we'd also like to table our objections with respect to that  
9 document.

10 **MR. HEBERT:** That's correct, your Honor.

11 **THE COURT:** Okay.

12 **MS. WOLF:** The next document that we have on our list  
13 before the Court is Defendants' 992. This is a document which  
14 we understand was from one of Senator Patrick's employees'  
15 files, and it's entitled Criminal Prosecutions Regarding  
16 Information On Prosecution of Voter Fraud. We've conferred  
17 with the Plaintiffs this morning. We've represented to the  
18 Plaintiffs that we will not be offering this document for the  
19 truth of the matter asserted, but instead as reflective of the  
20 state of mind or motive of intent of what was being considered  
21 in SB14. And it's my understanding that the Plaintiffs are  
22 amenable to the admission of that evidence subject to that  
23 caveat.

24 **MR. ROSENBERG:** That's correct, your Honor.

25 **THE COURT:** Okay. So that --

1           **MS. WOLF:** The next --

2           **THE COURT:** Now, let me just ask, the very first  
3 exhibit --

4           **MS. WOLF:** Sure.

5           **THE COURT:** -- PL-650 --

6           **MS. WOLF:** Yes, ma'am.

7           **THE COURT:** -- was that something the Court still  
8 needs to rule on?

9           **MS. WOLF:** No, ma'am.

10          **THE COURT:** No.

11          **MS. WOLF:** That's --

12          **THE COURT:** That -- okay.

13          **MS. WOLF:** -- that was just for the record to reflect  
14 that it's not being offered for the truth of the matter  
15 asserted. The next exhibit is an exhibit that we would ask the  
16 Court to rule on. This is DEF-1515. This is a document which  
17 we understand was in a DPS employee's file relating to things  
18 that require valid ID. And we would ask that the Court admit  
19 this. I don't think -- we're not seeking to admit it for the  
20 truth of the matter asserted. It's more in terms of what, you  
21 know, DPS had in its files. And so on that ground, we'd ask  
22 that the Court admit this particular document.

23          **MR. ROSENBERG:** I -- if I can take one quick look?  
24 And I'm not sure if that's the --

25          **MS. WOLF:** Sure.

1           **MR. ROSENBERG:** -- one you and I discussed this  
2 morning.

3           **MS. WOLF:** We didn't discuss that one this morning.  
4 Unfortunately I'm sure I have a hard copy of that one. Your  
5 Honor will excuse me for just one second. I need to pull up  
6 that electronic --

7           **THE COURT:** Okay, that's fine.

8           **(Pause)**

9           **MR. HEBERT:** So, your Honor, one -- I guess I'll  
10 start. This is a page that was circulated on Facebook. We  
11 don't know whose it is. It may have been in somebody's file at  
12 DPS. We believe that it's not self-authenticating. There's no  
13 indication who --

14           **THE COURT:** We don't know who it came from? It was  
15 just --

16           **MS. WOLF:** We understand that it came from  
17 Mr. Bottash's (phonetic) files, who's a DPS employee. However,  
18 I can't confirm that Bottash actually authored the document. I  
19 don't know that.

20           **MR. HEBERT:** And then Mr. Freeman's going to talk  
21 about some of the inaccuracies.

22           **MR. FREEMAN:** Certainly, your Honor. This document,  
23 to the extent that it purports to be a list of things that  
24 require valid ID, is factually inaccurate, and the Defendants  
25 have offered no factual basis on which to authenticate the

1 exhibit, on which to state that it is what it purports to be,  
2 which is a list of things that require a valid ID, such as  
3 boarding an airplane, for example, does not require a  
4 photographic ID, which is what this document implies. It has  
5 no actual factual relevance to this case insofar as it is not a  
6 factually accurate document and does not reflect the intent of  
7 any legislator.

8 **THE COURT:** The Court's going to sustain Plaintiffs'  
9 objection.

10 **MS. WOLF:** Thank you, your Honor.

11 **MR. FREEMAN:** Thank you, your Honor.

12 **MS. WOLF:** Turning to the next exhibit, it is  
13 Defendants' 1825. This is an analysis of lawful status and  
14 driver license identification card expiration dates. This was  
15 contained also in a DPS employee's file. And, again, we would  
16 not be offering this for the truth of the matter asserted, but  
17 instead would seek to offer it in terms of the fact that it was  
18 in a DPS employee's file and, you know, was among the things  
19 that could have been considered by DPS in implementing SB14.

20 **MR. HEBERT:** Could we take a look at that one? We  
21 haven't conferred on this one before.

22 **THE COURT:** Yes.

23 **MS. WOLF:** And unfortunately -- sorry, that's the  
24 other one I don't have a copy of -- 1825, I apologize.

25 **(Pause)**

1           **(Judge/Clerk confer)**

2           **MR. HEBERT:** This suffers from the same disability as  
3 the previous exhibit in the sense that it appears to be a  
4 summary written by someone unknown about lawful status and  
5 driver's license identification card expiration. There's no  
6 indication, even if it was in somebody's file, that they either  
7 read it or wrote it, and it's not authenticated for that reason  
8 and is hearsay. Giving -- my counsel want to add anything to  
9 my objection?

10           **MR. FREEMAN:** Well said.

11           **THE COURT:** The Court's going to sustain the  
12 objection.

13           **MS. WOLF:** And moving on to the next exhibit, which  
14 is Defendants' 1836, this also is a document from the DPS file.  
15 And this one I do have a paper copy of so we can look at this  
16 one together. This is a listing from I believe the American  
17 Association -- AAMDA, which is a motor vehicle association,  
18 documenting various legal presence requirements in various  
19 states. Again, the Defendants would not be seeking to  
20 introduce this exhibit for the truth of the matter asserted.  
21 This would instead be used to the extent that it was in a DPS  
22 employee's file and was considered during the implementation of  
23 SB14.

24           **MR. ROSENBERG:** So long as it's not for the truth of  
25 the matter asserted, we're fine with that.



1           **THE COURT:** All right, that's agreed to then.

2           **MS. WOLF:** Thank you, your Honor. Moving on to the  
3 next exhibit, which is DEF-2271, this is a photo ID legislation  
4 PowerPoint from what we understood to be Senator Taylor's file.  
5 We have conferred with Plaintiffs this morning. We have  
6 represented to them that this again will not be offered for the  
7 truth of the matter asserted but will just be offered in the  
8 sense that it's part of the file. And my understanding is that  
9 Plaintiffs are amenable to its admission on that basis.

10           **MR. ROSENBERG:** That's correct, your Honor.

11           **THE COURT:** All right.

12           **MS. WOLF:** The next group of exhibits, and I believe  
13 the last group of exhibits we are asking your Honor to consider  
14 this morning, is a series of documents, DEF-2279 through DEF-  
15 2282, so that's four exhibits. These are what we understand to  
16 be memoranda of telephonic communications between the  
17 Department of Justice with Representative Harless, Senator Troy  
18 Fraser, Representative Larry Gonzales, and Representative Aaron  
19 Pena. And we would argue, your Honor, that these are relevant  
20 in the sense that they are from the Section 5 file and are  
21 contemporaneous recordings of conversations with these  
22 particular legislators. And on top of that, they are business  
23 records which are contained in the government's files regarding  
24 conversations that representatives of the United States  
25 government had with these legislators regarding SB14 back in

1 August and September, 2011.

2           **MR. FREEMAN:** And, your Honor, the United States  
3 doesn't contest that they are authentic. However, they are  
4 double-hearsay because these are the notes of individual  
5 employees of the Department of Justice that were taken  
6 concerning conversations that they had during the preclearance  
7 process, and there is no ability to test or cross examine the  
8 accuracy of what the individuals were speaking to the  
9 Department of Justice employees were actually saying. And to  
10 the extent that they are now trying to put forward these as  
11 truthful statements, they are certainly hearsay and should not  
12 be admitted.

13           **THE COURT:** Overruled.

14           **MS. WOLF:** And, your Honor, with that, I believe that  
15 that addresses each of the exhibits that we needed the Court to  
16 rule on, so --

17           **THE COURT:** Okay.

18           **MS. WOLF:** -- thank you.

19           **THE COURT:** Anything from the Plaintiffs then?

20           **MR. ROSENBERG:** Your Honor, in light of what you've  
21 heard, would this be an appropriate time for us to move into  
22 evidence then everything that's not been objected to, and then  
23 we will provide your Honor with a comprehensive list? So on  
24 behalf of Plaintiffs and Plaintiff Intervenors, we move into  
25 evidence all of the exhibits that are not objected to or to

1 which objections are reserved, as per our agreement.

2           **THE COURT:** Okay. If there's no objection from the  
3 defense, those will be admitted then.

4           **(Exhibits received)**

5           **MR. SCOTT:** No objection, your Honor.

6           **THE COURT:** They're admitted then.

7           **MS. WOLF:** Thank you, your Honor.

8           **THE COURT:** Okay, is that all? We're ready to  
9 proceed to opening? Who's -- and you all have discussed with  
10 Brandy about time? She's going to be -- so we're ready to  
11 proceed then.

12           **MS. WESTFALL:** Thank you, your Honor. Before we  
13 begin, I would like to advise the Court that we will be running  
14 collectively over 30 minutes, and we would ask that any time be  
15 taken out of our 40 hours, if that is acceptable to the Court?

16           **THE COURT:** That's fine.

17           **MS. WESTFALL:** Good morning, and may it please the  
18 Court, Elizabeth Westfall for the United States. Before I  
19 begin, I would like to recognize all of my counsel at the  
20 Department of Justice and staff, whose heroic efforts have led  
21 to preparation for this trial.

22           The Plaintiffs and Plaintiff Intervenors raise a  
23 number of legal challenges to SB14, and I will address the  
24 challenge brought by the United States and all other Plaintiffs  
25 and Plaintiff Intervenors, that Senate Bill 14 violates Section

1 2 of the Voting Rights Act because it has a discriminatory  
2 result and because it was enacted with a discriminatory  
3 purpose. I will summarize the evidence the United States  
4 intends to introduce in support of our claim. Counsel for the  
5 other Plaintiffs will then summarize their claims and their  
6 evidence.

7 First, a brief overview of Senate Bill 14. And could  
8 I have the ELMO on, please? Senate Bill 14 requires Texans who  
9 vote in person to present one of a limited list of photo ID in  
10 order to have their ballot counted. Senate Bill 14 also  
11 creates a new form of ID called an election identification  
12 certificate, or EIC, that may only be used for voting. Texas  
13 trumpets the fact that the EIC is free, but to get an EIC, a  
14 voter needs underlying documentation that is not free and,  
15 indeed, can be quite expensive to obtain in terms of time and  
16 out-of-pocket cost. Moreover, the Department of Public Safety,  
17 which is charged with issuing EICs, has done little to  
18 publicize their availability or to make them available to those  
19 Texas voters who need them. And while SB14 allows voters  
20 without ID to cast a provisional ballot, that opportunity is  
21 virtually meaningless for any voter who does not have ID. The  
22 evidence will show that the State's implementation and  
23 enforcement of Senate Bill 14 will deny Hispanic and African  
24 American voters an equal opportunity to participate in the  
25 political process. First, expert testimony will demonstrate

1 that Hispanic and African American registered voters in Texas  
2 are less likely than Anglo voters to possess a form of  
3 qualifying Senate Bill 14 photo ID and that this difference is  
4 statistically significant. The analysis performed by  
5 Dr. Stephen Ansolahere, a Professor of Government at Harvard  
6 University, will show that approximately 787,000 Texas  
7 registered voters lack acceptable Senate Bill 14 ID.  
8 Dr. Ansolahere used four different widely-accepted  
9 methodologies to reach his conclusion, and each confirmed the  
10 same thing: Hispanic and African American voters make up a  
11 disproportionate share of the 787,000 Texas registered voters  
12 who lack SB14 ID. Indeed, African American voters are  
13 approximately twice as likely as Anglo voters to lack SB14 ID,  
14 and Hispanic voters are 25 to 50 percent more likely than Anglo  
15 voters to lack SB14 ID.

16 Second, the evidence will show that the exceptions to  
17 SB14's photo ID requirements are extremely narrow and do not  
18 mitigate the racially disparate burdens imposed by the law. As  
19 of January, 2014, only 18 voters had successfully obtained a  
20 disability exemption from SB14's photo ID requirements.  
21 Although SB14's ID requirements do not apply to voters who vote  
22 by mail, Texas limits the availability of voting by mail under  
23 its Election Code. Moreover, the evidence will show that  
24 African American and Hispanic voters in Texas are less likely  
25 than Anglo voters to cast their ballot by mail. Lay witnesses

1 will testify that voting by mail does not provide the same  
2 opportunity to participate in elections as an in-person ballot,  
3 and that some minority voters, particularly African Americans,  
4 prefer to vote in person. Dr. Barry Burden, a political  
5 scientists from the University of Wisconsin and an expert in  
6 election administration, will explain that SB14 is much  
7 stricter, both than Texas's prior voter ID bills and than voter  
8 ID requirements in other states. Indeed, the Texas legislature  
9 that enacted and has maintained SB14 rejected numerous  
10 ameliorative provisions contained in other states' voter ID  
11 laws. Dr. Burden will also explain why Texas's ID requirement  
12 is far more draconian than any ID law needs to be in order to  
13 serve legitimate state interests.

14 Third, with respect to those voters who do not  
15 already have an ID, a group that is disproportionately African  
16 American or Hispanic, the evidence will show that Hispanic and  
17 African American voters are less likely than Anglo voters to  
18 have the necessary underlying documentation, time,  
19 transportation, or means to obtain an SB14 ID. Several  
20 Hispanic and African American voters will testify to the  
21 obstacles they faced and the money they were forced to spend in  
22 order to get an EIC, including difficulties in obtaining  
23 required documents such as a Texas birth certificate.  
24 Deposition testimony and documents from Texas State agencies  
25 will show that the State has failed to effectively implement

1 either the EIC program or its program to issue reduced-cost  
2 birth certificates. So not surprisingly, as of May, 2014, the  
3 month of the last statewide election in Texas, DPS had issued  
4 only 266 EICs to the at least 787,000 registered voters who  
5 lacked SB14 ID. Dr. Jane Henrici of the Institute for Women's  
6 Policy Research at George Washington University, a scholar who  
7 has conducted extensive research among low income Texans, and  
8 other experts, will testify about the special burdens that low  
9 income voters face in general and minority low income voters in  
10 particular in obtaining SB14 ID. Dr. Gerald Webster, a  
11 Professor of Geography at the University of Wyoming, will  
12 explain his analysis of the travel burdens imposed on Hispanic  
13 and African American voters who need to get an EIC. He will  
14 show that lack of access to a motor vehicle is a primary factor  
15 underlying travel burdens, and that Hispanic and African  
16 American voters disproportionately lack access to a motor  
17 vehicle. Finally, the United States will show that SB14  
18 interacts with social and historical conditions in Texas to  
19 cause an inequality in the opportunities enjoyed by Anglo and  
20 minority voters to participate in the political process.  
21 Dr. Ansolahehere and Dr. Burden will show that Hispanic and  
22 African American voters participation rates lag behind the  
23 Anglo rate. Expert testimony from Dr. Chandler Davidson, a  
24 sociologist from Rice University, and others will show that  
25 Texas has a long history of official discrimination in voting

1 that has continued up to the present. Dr. Burden and the other  
2 experts will show that Hispanics and African Americans bear the  
3 effects of discrimination in education, employment, housing,  
4 and health, and that they continue to be underrepresented at  
5 all levels of government. They will explain how these  
6 socioeconomic disparities interact with SB14 to result in  
7 denying minority voters an equal opportunity to participate.  
8 Elections throughout the State of Texas are characterized by  
9 racially polarized voting. While the racial polarization is  
10 particularly relevant to the intent claim, to which I will turn  
11 in one moment, it also helps to explain why majority  
12 legislators were unresponsive to the problems SB14 caused  
13 minority voters.

14 Finally, the United States will show the tenuousness  
15 of the purported bases of Senate Bill 14. In sum, the evidence  
16 will demonstrate that the disparities caused by SB14 and the  
17 State's failure to mitigate the burdens of obtaining state-  
18 issued Senate Bill 14 ID will interact with the ongoing social,  
19 electoral, and historical conditions in Texas, and result in  
20 denying African American voters and Hispanic voters an equal  
21 opportunity to participate in the political process. The  
22 evidence will also show that the enactment of Senate Bill 14  
23 was motivated at least in part by a racially discriminatory  
24 purpose. Legislative testimony and documents concerning SB14  
25 and predecessor voter ID legislation will show that these bills



1 became progressively more onerous over several legislative  
2 sessions, notwithstanding acknowledgment that the failure to  
3 permit a broader set of ID would exacerbate the burden on  
4 minority voters. This testimony will also establish that bill  
5 supporters consistently rebuffed amendments that could have  
6 alleviated the discriminatory effect of the bill, particularly  
7 related to access to DPS driver license offices, with no harm  
8 to the stated goals of Senate Bill 14. The evidence will also  
9 show a legislative process infected by numerous procedural  
10 irregularities that are probative of an invidious purpose.  
11 Given the evidence of racial polarization across Texas, it is  
12 no defense to a claim of discriminatory purpose to say that the  
13 harms inflicted by Senate Bill 14 are purely partisan. At the  
14 close of evidence, the United States will return and ask this  
15 Court to enter a judgment concluding that SB14 violates Section  
16 2 of the *Voting Rights Act* and permanently enjoining  
17 implementation of this discriminatory law. We will also ask  
18 the Court, under Section 3(c) of the *Act*, to retain  
19 jurisdiction and require Texas to obtain approval from either  
20 this Court or the Attorney General for future changes in its  
21 election laws. Thank you, your Honor.

22 **MR. ROSENBERG:** Good morning, your Honor. Ezra  
23 Rosenberg on behalf of Texas NAACP and MALC. And I also  
24 obviously would acknowledge my team and also the entire team of  
25 Plaintiffs with whom I've had the honor of working, and to

1 acknowledge the Court for its expert handling and also its  
2 staff, in particularly Ms. Cortez, for helping to herd these  
3 cats. I think for a lot of us, we think that summer is not  
4 going to begin for another two weeks, and we really appreciate  
5 the time and effort that the Court has taken to bring us to  
6 this day.

7 I'm the first of the private Plaintiffs and Plaintiff  
8 Intervenors who is going to address the Court. Each of us is  
9 going to focus on a different part of the case. But  
10 ultimately, together with the narrative that Ms. Westfall  
11 delivered, we are going to be telling this Court a single  
12 story, a story of a statute that need not have been enacted  
13 because it was designed to address a problem that did not  
14 exist; a story of a statute that should not have been enacted  
15 because it was enacted at least in part with the purpose of  
16 minimizing the opportunities for blacks and Hispanics to  
17 participate in the political process. We begin the discussion  
18 of discriminatory intent with the narrative that Ms. Westfall  
19 has just presented to the Court, the disproportionate impact in  
20 terms of possession of SB14 IDs and the burden that blacks and  
21 Hispanics have that whites do not have in terms of getting IDs;  
22 because that in itself is reflective and evidential of  
23 discriminatory intent. But the story then continues with the  
24 long, unfortunate history of discrimination in voting against  
25 blacks and Hispanics in this state, a history that includes in

1 the 20th century all white early primary days, poll taxes,  
2 tactics which experts like Dr. Barry Burden and Dr. Vernon  
3 Burton will explain to this Court were justified as SB14 is  
4 justified as ways of preventing fraud. And tactics like this  
5 have continued through the present day. Since the 1970s, in  
6 each decade, redistricting plans that were enacted by the Texas  
7 legislature have been struck down as racially discriminatory.  
8 Perhaps one of the most significant pieces of evidence your  
9 Honor will hear in this trial will be that this very same  
10 legislature that enacted SB14, enacted statewide redistricting  
11 plans that were struck down by two different courts as racially  
12 discriminatory in 2012. But there will be more. There may not  
13 be a single smoking gun of discriminatory purpose, but we  
14 submit that the proofs will show a veritable arsenal of heavy  
15 artillery that are reflected in the legislative choices that  
16 the Texas legislature made each and every time -- virtually  
17 each and every time the legislature was confronted with a  
18 decision relating to photo ID, whether or not it will impact  
19 minorities more heavily than whites. It shows the tact that  
20 impacted minorities adversely more heavily than whites. And we  
21 can begin with the first question of, why a photo ID law at  
22 all? There's a lot of truth to the adage, "If it ain't broke,  
23 don't fix it." And there was nothing wrong with the voter ID  
24 law that was in place in Texas prior to SB14. Virtually every  
25 witness that your Honor will hear in this trial, including the

1 State's witnesses, will testify unequivocally that SB14 was  
2 designed to deal with only one sort of voter fraud, and that is  
3 in-person voter impersonation. And the proofs will be  
4 overwhelming at court, your Honor, that in-person voter  
5 impersonation is virtually nonexistent. You will hear that  
6 from Buck Wood, the election official as Mr. Dunn explained a  
7 few moments ago. He's been searching for voter fraud. He's  
8 never seen this. You're going to hear from Dr. Lorraine  
9 Minnite, who is a nationwide expert on voter fraud. She's  
10 hardly ever seen this after having studied voter fraud for  
11 years and years. And you will also hear this from the  
12 testimony of Major Mitchell, the person who is charged by the  
13 Texas Attorney General to sleuth out voter fraud. And he's  
14 identified perhaps two cases of voter fraud in the last 12  
15 years out of tens of millions of votes that might have been  
16 addressed by SB14. Now, there is a sort of voter fraud that  
17 the proofs will show is a concern in Texas, and that's absentee  
18 ballots. But the proofs will show that SB14 is not designed to  
19 deal with the prime of absentee ballots. In fact, it kind of  
20 encourages it. And, as Ms. Westfall just pointed out, absentee  
21 ballots are a mechanism that are used more by whites than by  
22 blacks or Hispanics. So at the end of the proofs, your Honor  
23 may very well be asking herself, why did the legislature choose  
24 to deal with photo ID and not absentee ballots, and why did the  
25 proponents of SB14 continuously press a nonexistent problem of

1 in-person voter fraud as the basis for SB14? Something else  
2 was going on. Similarly, throughout the legislative process  
3 that led to the enactment of SB14, the legislators who were  
4 proponents of the bill looked to other states--Georgia and  
5 Indiana--as models for their statute. But Georgia and Indiana  
6 included in their statutes significant groups of  
7 identification, specifically federal and state identifications  
8 and student identifications, that were not -- that the  
9 legislature of Texas made a decision not to include in SB14.  
10 And you will hear from Dr. Lichtman that those specific modes  
11 of identification that were excluded from the Texas statute are  
12 forms of identification that are more likely to be held by  
13 blacks and Hispanics than by whites in Texas. On the other  
14 hand, Texas did decide to include in SB14 a form of  
15 identification not included in other states: that's the  
16 license to carry. And you will also hear from Dr. Lichtman  
17 that that is a form of ID that whites are more likely to  
18 possess in Texas than are blacks and Hispanics. All of this  
19 was done despite the fact that the legislature was on notice  
20 time and time again by opponents of the bill, minority  
21 legislators, that the decisions they were making would impact  
22 more heavily and more adversely on blacks and Hispanics than on  
23 whites. And they heard this not only as the proofs will show  
24 from the minority legislators, but from at least one highly  
25 placed staff member. They ignored those warnings. They not

1 only ignored them, but they made the bill progressively worse,  
2 more and more stringent, with each passing day. And ultimately  
3 the legislature steamrolled over the minority, deviating from  
4 established procedures in the legislature, doing away with the  
5 hallowed tradition of the two-thirds rule in the Senate,  
6 referring the bills to special committees, and ultimately  
7 concocting a legislative emergency which would allow the bill  
8 to be offered, considered, and passed with unprecedented speed.  
9 Something else was going on, your Honor, and we submit that at  
10 the end of this case, the proofs will show that the something  
11 else was a discriminatory intent to minimize the opportunities  
12 of blacks and Hispanics in the political process. Thank you.

13 (Pause)

14 MS. CONLEY: Good morning, your Honor. My name is  
15 Danielle Conley and I, along with my colleagues, Kelly Dunbar,  
16 Ryan Haygood, Natasha Korgaonkar, represent the Texas League of  
17 Young Voters Education Fund, a nonprofit, nonpartisan voter  
18 advocacy group based in Houston, and Imani Clark, a registered  
19 black voter and student at Prairie View A and M University. On  
20 behalf of our clients we join the Department of Justice and our  
21 fellow Plaintiffs and Intervenors in urging this Court to  
22 strike down SB 14.

23 Your Honor, the evidence in this case will establish  
24 overwhelmingly that SB 14's strict photo ID requirements impose  
25 unjustified discriminatory burdens on the voting rights of

1 hundreds of thousands of registered Texas voters. And the  
2 evidence will show that SB 14 disproportionately and  
3 substantially burdens the voting rights of African Americans,  
4 and even worse hits hardest the most vulnerable members of that  
5 population. The law's unmistakable purpose and effect is  
6 racial exclusion.

7 Every generation of Texans faces new civil rights  
8 challenges, and SB 14 is emblematic of this generation's  
9 struggle to secure equal and meaningful access to the ballot.

10 As several experts will testify, SB 14 effectively  
11 disenfranchises over 100,000 registered black voters in the  
12 State of Texas who, for a number of complex, historic, and  
13 socioeconomic reasons do not possess any of these limited forms  
14 of ID.

15 Now the State of Texas has argued that this burden is  
16 minimal because voters can obtain a so-called "free election  
17 identification certificate" or an EIC, but the expert testimony  
18 of Dr. Coleman Bazelon, among others, will establish that EICs  
19 are not, in any meaningful sense, free and, indeed, they are  
20 quite expensive for many of the voters who actually need them.

21 The time and resources needed to secure an EIC impose  
22 real concrete costs on all voters, but these costs fall the  
23 hardest on black voters in Texas who, because of Texas's long  
24 and enduring legacy of historical and ongoing racial  
25 discrimination, are disproportionately poor.

1 Dr. Bazelon will testify that not only are African  
2 Americans more likely to need to acquire an EIC to retain their  
3 right to vote, but that also the travel cost portion of the  
4 burden created by SB 14 alone requires African Americans to  
5 expend a share of their wealth that is more than four times  
6 higher than the share required for a white Texan.

7 And while the expert testimony in this case will  
8 demonstrate the total aggregate impact of SB 14 on African  
9 Americans, it's the testimony of the affected individuals that  
10 will really illustrate the precise harm that SB 14  
11 disproportionately imposes upon the voting rights of black  
12 Texans. It's the testimony of these individuals that will  
13 demonstrate that the impact of SB 14 is in no way hypothetical.  
14 It is palpable and the law is a tragic continuation of a  
15 history of State sanctioned efforts to silence the voices of  
16 people of color.

17 For example, today you will hear from Elizabeth  
18 Gholar, a retired school cook who was borne by a midwife in  
19 rural Louisiana in 1938. Ms. Gholar, who has lived in the  
20 South for most of her life, will testify about her experience  
21 coming of age in a not too distant era where racial  
22 discrimination was simply a part of her daily routine. She  
23 will testify about a time when black people struggled for  
24 inclusion in America's democracy. To Ms. Gholar that past is  
25 now present, it's now front and center because SB 14 prevents



1 her from voting in person in Texas.

2           You will hear testimony that Ms. Gholar, who is  
3 registered to vote in Texas, who wants to vote in Texas, went  
4 to great lengths to try and acquire one of the IDs required by  
5 SB 14 so that she could vote in person. She went to the DPS on  
6 two separate occasions and each time Texas refused to issue her  
7 one. Both times DPS cited a clerical error on her birth  
8 certificate as the reason why.

9           Ms. Gholar will testify that voting in person is  
10 precious to her, that it's a right that she's earned, and that  
11 the effect of SB 14 is to deprive her of her political voice.  
12 And Ms. Gholar's case is illustrative of the foreseeable and  
13 inevitable effect that SB 14 has had and will continue to have  
14 election after election on the voting rights of the most  
15 vulnerable segments of the Texas population.

16           Unfortunately, SB 14's racial exclusion is nothing  
17 new. Texas has a long and sordid history of State-sanctioned  
18 discrimination against African Americans and has previously  
19 enacted laws with the purpose and the effect of excluding black  
20 voters from the political process.

21           As the expert testimony of Dr. Vernon Burton will  
22 show, discriminatory voting devices whose racial motivations  
23 are beyond dispute, such as the poll tax and the re-  
24 registration requirement, were all enacted against the  
25 pretextual backdrop of preventing voter fraud.

1           In addition, while segregation, restrictive covenants  
2 and other methods of official discrimination stretch back over  
3 a century, the legacy of such discrimination persists today in  
4 severe and enduring disparities for African Americans in  
5 education, in health, employment, income and transportation.

6           You will hear expert testimony that African Americans  
7 are less likely than white Texans to graduate from high school  
8 or to own a car, and that they are more likely to be unemployed  
9 and to live below the poverty line. These disparities interact  
10 with and amplify the burdens imposed by SB 14 denying the  
11 ability of black voters to participate effectively in the  
12 political process.

13           But African Americans living in Texas in these  
14 socioeconomic conditions are not the only black Texans who face  
15 formidable obstacles set in place by SB 14. Even for African  
16 Americans who have overcome certain educational hurdles such as  
17 college students, the burdens of SB 14 are heavy.

18           You will hear from the Texas League of Young Voters  
19 Fund in this case. They are a grass roots advocacy group that  
20 educates young voters of color in Texas about the electoral  
21 process and encourages and empowers these young people to  
22 become leaders in their community and to participate fully in  
23 the political process. Through their work, particularly at  
24 historically black colleges and universities like Prairie View  
25 A and M University, the League knows firsthand that SB 14

1 disenfranchises young black student voters in Texas who may not  
2 have the means or the ability to obtain an SB 14 compliant ID.  
3 These students do, of course, have student IDs, but a student  
4 ID is one of the many forms of identification that Texas has  
5 now inexplicably determined as insufficient to demonstrate who  
6 you are at the polls, never mind the students have been voting  
7 with student IDs in Texas for years without the slightest  
8 evidence of a problem.

9           You will also hear testimony from Dr. Bazelon that  
10 students at historically black colleges and universities are  
11 disproportionately affected by SB 14 as compared to the  
12 registered voter populations statewide. One such college  
13 student is Imani Clark, a student at Prairie View A and M whom  
14 SB 14 has disenfranchised.

15           Imani Clark and other students of color who lack one  
16 of the few forms of ID that Texas has determined is acceptable,  
17 are now fighting the very same battles that their parents and  
18 their grandparents fought. Sure, the Texas law at issue here  
19 looks a little different now. Instead of a literacy  
20 requirement or a required fee to register to vote, it's an  
21 unduly restrictive ID requirement. But SB 14 shares a kinship  
22 with Texas's racially discriminatory laws of the past. All of  
23 these laws were intended to and do keep a population that is  
24 already on society's margins from having a voice. In 2014 we  
25 should not still be here.

1           At bottom, your Honor, SB 14 imposes an intolerable  
2 and a wholly unnecessary burden on the right to vote of  
3 hundreds of thousands of registered voters, and SB 14 imposes  
4 these burdens without any meaningful countervailing benefit.

5           The evidence will show that SB 14 response to a  
6 phantom problem, in person voter fraud, despite any evidence --  
7 excuse me, despite the absence of any reliable evidence that in  
8 person voter fraud poses any threat to Texas elections, the  
9 State is effectively disenfranchising hundreds of thousands of  
10 voters who are disproportionately black supposedly in the  
11 interest of preventing a problem that simply does not exist.  
12 Such an egregious violation of the fundamental and personally  
13 essentially right to vote countermands the 14th and 15th  
14 Amendments of the United States Constitution, the Voting Rights  
15 Act and common sense. It should not be countenanced by this  
16 Court. Your Honor, SB 14 must be enjoined. Thank you.

17           **MR. GARZA:** Jose Garza on behalf of the Ortiz  
18 Plaintiffs, and may it please the Court, over the last several  
19 decades this State's Latino population has been growing at a  
20 dramatic rate. Just within the last decade from 2000 to 2010  
21 the State had significant population growth of over 20 percent.  
22 Latinos accounted for about 65 percent of that growth, and  
23 together with other minority populations, over 90 percent of  
24 the State's growth. This growth pattern has been widely  
25 discussed in Texas and anticipated in the Latino community.

1           In response to this growth the State's leadership had  
2 a choice, embrace the new reality and this growth and the  
3 aspirations of the Latino community and compete for its vote,  
4 or it could limit the political weight of the Latino vote. In  
5 its adoption of SB 14 the State chose voter suppression.

6           In addition to the evidence that this Court will hear  
7 from the experts and the evidence that's been described by my  
8 colleagues, statistical evidence and the uneven impact of SB  
9 14, the Plaintiffs will present numerous witnesses who have  
10 been disenfranchised by SB 14. Some of these witnesses will  
11 tell of having paid poll taxes before they were abolished.

12           There will be testimony from witnesses who have  
13 faithfully voted for decades, their parents having instilled in  
14 them the importance of the exercise of the franchise.

15           There will be testimony from witnesses about their  
16 distrust of voting by mail and their practice and preference  
17 for voting in person.

18           There will be numerous witness who, to this day, do  
19 not have the identification necessary to vote under SB 14.  
20 Some of these don't have original or certified copies of their  
21 birth certificates without which they cannot get the EIC.

22           Plaintiffs Margarito Lara and Maximina Lara, brother  
23 and sister, will testify that their births were never  
24 registered and, thus, there are no birth certificates for them.  
25 They will testify to difficulties getting to distant DPS

1 offices and long waits there.

2 Others will tell of the difficulties they faced in  
3 obtaining ID, making hard financial choices and long trips to  
4 remote offices. Many of these witnesses live below the poverty  
5 line with no savings for emergencies. They make hard choices  
6 each month about what they will do without.

7 Would it be impossible for them to spend the money  
8 necessary for them to get the ID?

9 Certainly for some the answer is no, but impossible  
10 is not the standard. They are poor people who have not have --  
11 do not have extra money and who need to prioritize their  
12 expenses. The Court will see that these are regular, real  
13 people. They are not professional witnesses. Some may not  
14 have ever gone to school, many have a very minimal education,  
15 yet they are proud and perhaps reluctant to admit just how  
16 tight their budgets really are. Who wants to admit that they  
17 can't afford to spend on an ID what many of us spend at  
18 Starbucks?

19 Who wants to admit that they can't get a ride  
20 somewhere or that they want to have -- to save those rides for  
21 when they really urgently need them?

22 Texas may try to impeach these witnesses with  
23 testimony from their depositions about their ability or plans  
24 to get SB 14 ID; yet most of these witnesses still today do not  
25 have SB 14 ID. The burden of SB 14 is too heavy for them to

1 have gotten a new ID. They come to give testimony in this case  
2 because they believe that their right to vote is important.  
3 They may not understand the provisions of SB 14 or how to get  
4 the limited forms of SB 14 ID. They may get confused when  
5 questioned about the documents that they have, even whether  
6 they are for or against SB 14.

7 But, of course, this isn't truly what this case is  
8 about. As the Court listens to the testimony of those who  
9 voted prior to the enactment of SB 14 and who, afterwards, are  
10 unable to do so, the Court will see that these votes -- these  
11 voters have been disenfranchised by SB 14.

12 **MR. RIOS:** May it please the Court, Rolando Rios for  
13 the Hispanic Judges and Commissioners. And, again, I want to  
14 acknowledge County Commissioner Roderick Galvan who is going to  
15 be the new President of the Texas Association of Hispanic  
16 Judges.

17 And I first point out to the Court that this is the  
18 first type of lawsuit that the Association has participated in.  
19 And they are concerned because they do have a unique position  
20 in Texas, voter registration in Texas Government. Before SB 14  
21 County Government and the Commissioners supervised voter  
22 registration and issued voter registration cards.

23 Now because of SB 14 that responsibility has to be  
24 shared with the Department of Public Safety. They also  
25 supervise and conduct elections. As such they have a front row

1 seat on how elections vote in -- work in Texas, and they have  
2 seen no evidence of any in person voting fraud, none  
3 whatsoever.

4 Their concern, your Honor, and this is why they are  
5 here, is because SB 14 is having the intended effect, the  
6 intended effect that the Bill was passed for. It was intended  
7 to suppress the Hispanic vote in violation of the Constitution  
8 and the effect it's having is violating Section 2 of the  
9 Federal Voting Rights Act.

10 As of today with the application of SB 14 we have  
11 seen 90 percent of provisional ballots have never been cured;  
12 in other words, 90 percent of some of the voters that came to  
13 vote, provisionally that would have voted, and their vote would  
14 have counted before SB 14, now those votes have been  
15 eviscerated.

16 One comment on partisan politics.

17 I've been involved in registering against the State  
18 of Texas for 25, 30 years and they always use the excuse, "Oh,  
19 this is partisan. When we draw the districts we want to  
20 minimize the impact of the Democratic vote." It doesn't  
21 matter, it doesn't matter what the intent is if the effect is  
22 to discriminate against minorities when it violates Section 2  
23 of the Voting Rights Act. Thank you, your Honor.

24 **MR. DUNN:** May it please the Court, my name is Chad  
25 Dunn, I'm here on behalf of the Veasey-LULAC Plaintiffs, and it



1 is both my duty and honor to present to this Court the last one  
2 of the opening statements on behalf of the Plaintiffs.

3 I speak in terms of duty because as Americans and as  
4 Texans it's something that we live by. We talk about duty and  
5 honor. We talk about meaning what you say and saying what you  
6 mean, and in this case it is my awesome responsibility, as well  
7 as these men and women behind you -- behind me, to put on the  
8 evidence that supports the claims in this case. My friends  
9 with the State, I have no doubt, will honorably and ably  
10 present their position.

11 And, of course, I don't have to tell the Court about  
12 duty, it deals with it every day. It has the awesome  
13 responsibility of looking at defendants accused of a crime and  
14 determining their freedom. It decides the economic future of  
15 plaintiffs and defendants. But in perhaps no other case  
16 presented to this Court does it hold in the balance the future  
17 and the rights of so many.

18 What Senate Bill 14 has done and what this State and  
19 State Legislature have done, as it has done so many despicable  
20 times before, is sack up the seeds of democracy, stack them in  
21 a barn and put them away so that they don't see the light of  
22 day. At the end of this case we're going to ask the Court to  
23 tear open that bag of seeds of democracy, tear open the  
24 hundreds of thousands of voters and let them have a voice.

25 Now so much has been said about the racial

1 discrimination claims in this case, of course, my clients bring  
2 those claims as well. I'll try not to repeat much of what has  
3 been said there. Instead what I will focus on are two other  
4 claims that have not received attention.

5 One we refer to as the "Crawford claim." Of course,  
6 it refers to Crawford versus Marion County, the US Supreme  
7 Court case where Justice Stevens issued a limited opinion  
8 finding that Indiana's photo ID law was constitutional.

9 And in that case the Supreme Court stated that the  
10 test that this Court must weigh is whether the burden on the  
11 right to vote is offset by a State interest that is  
12 sufficiently weighty to justify that burden.

13 We start with determining what was the State interest  
14 and, of course, the State takes the position that it was  
15 attempting to resolve in person voter fraud, and we know, as  
16 you've heard from others, there is no in person voter fraud in  
17 the State of Texas.

18 You're going to hear from Mr. Wood, you're going to  
19 hear from other experts, you're going to hear from Major  
20 Mitchell with the State of Texas, the person responsible, as  
21 Mr. Rosenberg said, for investigating this type of fraud.

22 So there isn't a sufficiently weighty State interest,  
23 and though the State may come here in moments hence and tell  
24 this Court that in *Crawford* the Supreme Court found that the  
25 mere suspicion of voter fraud was sufficiently weighty.

1           The limited record in *Crawford* on Cross Motions for  
2 Summary Judgment, a record that was lamented in its respects by  
3 the Supreme Court and Courts in between, is going to be offset  
4 by the tremendous record put forth in this Court about voter  
5 fraud and its lack of existence.

6           So once we determine that there's not a sufficiently  
7 weighty State interest we then turn to how many people are  
8 affected?

9           And you've heard that Dr. Ansolahehere and Dr. Herron  
10 will testify that approximately 800,000 registered voters lack  
11 an SB 14 approved ID. That's not the only evidence you'll  
12 hear.

13           You'll also hear from Dr. Barreto and Sanchez who  
14 performed an extensive survey on Texans and determined that  
15 there were hundreds of thousands of people who reported to not  
16 have an SB 14 approved ID.

17           Now the State will quibble with these numbers and it  
18 might find an example here or there that show up wrong in the  
19 survey or show up wrong in some other piece of evidence, but at  
20 the end of the day it will be indisputable that more than half  
21 a million Texans will lose the right to vote under Senate Bill  
22 14.

23           And we'll likely hear from the State its lament about  
24 its supposed bruised sovereignty as a result of these Federal  
25 laws. But it is important to note that over half a million

1 people is more than the voting age population in six States,  
2 and the State sovereignty means very little when it excludes a  
3 number of people that themselves would make up their own State  
4 in this great Union.

5           They will also be here about other State laws and how  
6 they had various requirements, and how they were fair and how  
7 the Department of Justice approved them and how Courts approved  
8 them, but what the State won't focus on is that in Indiana one  
9 merely needs to sign an affidavit of indigency to vote, an  
10 affidavit that was proposed as an amendment here and rejected.

11           In South Carolina one can register to vote and  
12 they'll receive their photograph at the same time, again an  
13 option Texas elected not to include.

14           In Georgia other documents other than a birth  
15 certificate can be used to obtain a photo identification, again  
16 an option Texas chose to ignore.

17           So what happens to these people who don't have an ID?

18           Well, you'll hear their stories as they've been  
19 described here. You'll hear about the trouble, the time, the  
20 money spent. But how do they get these IDs or what did the  
21 State Legislature consider about what was necessary to obtain  
22 an ID? And what you'll hear is very little.

23           The Legislature punted these requirements to various  
24 State agencies who, over time, have adopted one regulation  
25 after another, some inconsistent with others, some

1 inconsistently enforced from one city and county to another.

2           You'll hear about the Department of Public Safety at  
3 various times requiring fingerprints, potentially doing  
4 criminal background checks on people who want to exercise the  
5 right to vote, and whether these are true, whether these things  
6 occur in every instance, the perception is there, the  
7 perception that was designed to scare people away from  
8 exercising their Constitutional rights.

9           We have DPS requirements and the Department of Health  
10 and Human Services requirements. They can't offset the  
11 sufficiently weighty State interest, they're not even rational.

12           Finally, the birth certificate.

13           This State had an opportunity to provide birth  
14 certificates for free, as other States have done in this  
15 context. They chose not to. Instead, it reduced the rate for  
16 a birth certificate to \$3, but interestingly in order to obtain  
17 a \$3 birth certificate, one must show up at the office in  
18 person; whereas the more expensive birth certificates that  
19 others of us are fortunate enough to hold, can be obtained by  
20 mail. Again, no rational basis for the distinction other than  
21 to further your cause of preventing the right to vote.

22           This Court can't just enjoin the Department of Public  
23 Safety or the State at this point to fix this law because  
24 there's no time for this election. These issues have to be  
25 enjoined and the State, if it wants to exercise its opportunity

1 to make adjustments to the law, must do so after the election.

2 Now the next point I'd like to discuss is the poll  
3 tax.

4 The poll tax, of course, was a lamentable history  
5 after Smith v Allwright when the United States Supreme Court  
6 had to strike down Texas's efforts to exclude blacks from the  
7 Democratic Primary, Texas came up with the idea that so many  
8 other states in the South used, of charging people to vote,  
9 testing them to see if they could read.

10 Texans would be all too lucky to go back to the poll  
11 tax after Senate Bill 14 because paying a dollar and a half or  
12 \$3 to get the ballot, although disgusting and rightfully struck  
13 down by the Supreme Court in the Allen case in 1966 is nothing  
14 compared to the burden that these people now face in order to  
15 obtain an EIC, a driver's license or some other  
16 photographic ID.

17 The statute, again, on poll tax, says nothing about  
18 the birth certificate cost, but we know that the Health and  
19 Human Services regulations this Court will hear charged \$3 so  
20 at a minimum to vote in Texas one has to pay \$3 to get a birth  
21 certificate and for so many others who live in other States,  
22 it's tremendously more.

23 Again, the State can't cure this in time for this  
24 election, too much time has gone by, too much -- too little  
25 effort has been put forth in getting IDs in the hands of people

1 who require them.

2 And, again, it's been stated that there are a number  
3 of amendments that have been offered that were -- that would  
4 have ameliorated the burdens on poor people and on Latinos and  
5 blacks and, again, they were ignored.

6 And then we may hear the State say, "Look, most of  
7 these people can vote by mail."

8 Now if we went out to the public and told them that  
9 green people can vote until noon, and red people can vote until  
10 4:00, and white people could vote until 7:00 p.m., there would  
11 be no question that this Court and those above it would find  
12 that distasteful, but more importantly unconstitutional.

13 That's essentially what the State has done to its  
14 elderly. They have essentially said if they cannot obtain IDs  
15 then they can vote by mail, earlier than everyone else, through  
16 a more complicated procedure than everyone else.

17 The last thing I would like to make a few comments  
18 about the race claims, before I conclude.

19 This State has not passed a redistricting law in over  
20 40 years that have survived Constitutional and Federal Court  
21 muster, and as Mr. Rosenberg ably pointed out, the State has  
22 recently passed a redistricting plan that has been challenged  
23 and those challenges, at least, partially affirmed by six  
24 different Federal judges.

25 In LULAC v Perry, the so-called re-redistricting

1 case, the US Supreme Court had to refashion Congressional  
2 District 23 which heads out San Antonio to West Texas, because  
3 it was intentionally discriminatory against Latinos and now, in  
4 this most recent case, the State is back in Court having  
5 dismantled CD 23 again.

6 Right here, where this Court and its staff lives,  
7 Congressional District 27, whereas Nueces County used to anchor  
8 its own congressional district that went to the south, several  
9 hundred thousand people, most of them Latino, have been severed  
10 from their traditional district and taken north to places like  
11 Bastrop and Caldwell County where their votes and voices will  
12 no longer be heard.

13 A lot has been said here in the media about Senate  
14 Bill 14 being a solution without a problem, and that's true.  
15 Unless one views the problem of the emerging majority in this  
16 State beginning to exercise its Constitutional rights, if one  
17 views that as a problem, Senate Bill 14 is one effective  
18 solution.

19 So I'll return to where I started to talk about duty.  
20 At the end of this case we're going to ask the Court to look at  
21 the history, look at the facts here, look at the law, and  
22 enjoin Senate Bill 14.

23 I'm honored to have as co-counsel two people who have  
24 spent their lifetime fighting for voting rights, Mr. Hebert and  
25 Mr. Derfner. Mr. Derfner, of course, tried Light versus



1 Register (phonetic), the 1970s era case that struck down Texas  
2 Legislatures at large districts. Mr. Hebert has worked has  
3 worked for the voting section and has handled cases in Texas  
4 and beyond for 40-plus years.

5           They talk about how history will look back on this  
6 moment. They talk about how history will look back at the  
7 decisions that we make here as attorneys, as Courts, as staff,  
8 and what we do at this important moment in this case. And they  
9 talk about how when this final chapter of history is written on  
10 voting rights in Texas, how is it going to come out?

11           And in some ways the Court has a benefit because this  
12 chapter has already begun. We already know Justice Stevens has  
13 walked back from what his opinion in *Crawford* has been read to  
14 be said.

15           Judge Posner has walked back what he thought was  
16 going on when he heard on the Seventh Circuit the Indiana case.

17           And we know instinctively that this law was designed  
18 to prevent people to vote, we know instinctively it has nothing  
19 to do with fraud.

20           So at the end of this case we're going to ask this  
21 Court to tear open that bag of seed, to tear open those votes  
22 because the law requires it, because of the facts requirement,  
23 and more importantly, because the sacred social contract among  
24 us as Americans, the (indiscernible) that we live with as a  
25 country, as the Constitution require it. Thank you, your

1 Honor.

2 **THE COURT:** All right. So that's all from the  
3 Plaintiffs, and who is going to open for the Defense?

4 **MR. CLAY:** May it please the Court, good morning,  
5 your Honor.

6 **THE COURT:** Good morning.

7 **MR. CLAY:** Now before I get started I was wondering  
8 if I could switch from the Elmo to the computer screen back  
9 there. You all set, Brian?

10 (No audible response)

11 **MR. CLAY:** Your Honor, my name is Reed Clay and I'm  
12 representing the State of Texas and the various state agencies  
13 that are defendants in this case. Like my plaintiff counsel, I  
14 would like to thank the hard work of our very valuable team and  
15 assets that we have here. They have worked endless hours to  
16 bring us to this point and have represented the State of Texas  
17 with great honor and great duty.

18 This case, your Honor, is about Texas commonsense  
19 requirement that voters present a photo identification to prove  
20 that they are who they say they are before they cast a ballot.  
21 This requirement is one that Americans comply with every day to  
22 -- in order to engage in many mundane activities such as  
23 cashing a check, opening a bank account, boarding a plane, and  
24 also to engage in activities which implicate important  
25 constitutional rights like gun ownership and even gaining entry

1 and access into this very courtroom in which we stand today.

2 More importantly, this requirement is one that has  
3 been precleared by the Department of Justice and upheld by the  
4 Supreme Court of the United States and not surprisingly, your  
5 Honor, given how commonsensical it is, a majority of Texas  
6 voters have supported this bill for years. This is a poll  
7 conducted in February of 2011, the date is up there near the  
8 top, by the Texas Tribune and the University of Texas and it  
9 was -- as you can see it shows that 75 percent of registered  
10 voters in Texas agree with the proposition that a voter should  
11 present a photo ID before casting a ballot. This poll, among  
12 many others, show the same thing and this poll, among many  
13 others, were possessed by the legislatures at the time that  
14 they enacted this bill.

15 This bill shows something else important however. It  
16 shows that not only do a majority of Texas voters approve the  
17 law but a majority of Texas minority voters approve the law.  
18 That includes a majority of -- 80 percent of white voters, 63  
19 percent of African American voters, and 68 percent of Latino  
20 voters around the time that this bill was being considered in  
21 the legislature supported the proposition that one should show  
22 an ID before casting a ballot.

23 Although there are many claims in this case and it  
24 would take me virtually all day to quibble with the various  
25 arguments presented by my -- effectively presented by my co-

1 counsel here today there really are two types of evidence that  
2 will be presented, your Honor.

3           The first is evidence that purports to show the  
4 effects or lack thereof of SB 14 on Texas voters. The second  
5 is evidence regarding the purpose of the legislature in  
6 enacting SB 14. Most of the claims -- most of the plaintiff's  
7 claims require that they show evidence of a substantial burden  
8 on the right to vote. The Section 2 claim requires that the  
9 burden be so great that it denies or bridges the right to vote  
10 on account of or because of race. The 14th Amendment claim or  
11 what I will call the Crawford claim requires the plaintiffs to  
12 prove that the substantial burdens placed upon voters by SB 14  
13 outweigh the legitimate interests that the legislature had in  
14 enacting SB 14 that are recognized by the Supreme Court in  
15 *Crawford versus Marion County*.

16           Speaking of *Crawford*, it wasn't until the very end  
17 that the plaintiffs brought up *Crawford* and I suspect that's  
18 because they don't like what they find there. They find the  
19 Supreme Court upholding a law that looks a lot like Texas' law  
20 and the Supreme Court upholding a law that it is a decision  
21 that the Texas legislature refers to when crafting the law that  
22 was enacted by the legislature in 2011. As such, I would like  
23 to use *Crawford* as guidance because I believe it is instructed  
24 both for the parties and for the Court and so I -- and I  
25 believe it supplies the framework for analyzing most of the

1 plaintiffs' claims in this case. So I'm going to flash up a  
2 series of quotes here from the opinion and walk through the  
3 various --

4 (Pause)

5 MR. CLAY: For example, a voter may lose his photo  
6 identification, may have his wallet stolen on the way to the  
7 polls, or may not resemble the photo in the identification  
8 because he recently grew a beard. Burdens of that sort arising  
9 from life's vagaries however are neither so serious, nor so  
10 frequent, as to raise any question about the constitutionality  
11 of Indiana's voter ID law. The availability of the right to  
12 cast a provisional ballot provides an adequate remedy for  
13 problems of that character. From this Court we understand that  
14 burdens that arise from the vagaries of life are neither so  
15 serious nor so frequent to raise any question about the  
16 constitutionality of voter ID. That's particularly true in the  
17 availability to cast a provisional ballot as offered by the  
18 state. Texas, like Indiana, offers the ability to cast a  
19 provisional ballot.

20 So what are the relevant burdens? The burdens that  
21 are relevant, the Supreme Court tells us, to the issue before  
22 us are those imposed on persons who are eligible to vote but do  
23 not possess a current photo identification that complies with  
24 the requirements of Indiana's voter ID law. The fact that most  
25 voters already possess a valid driver's license or some other

1 form of acceptable identification would not save the statute  
2 under our reasoning in Harper if the state required voters to  
3 pay a tax or fee to obtain a new photo identification but just  
4 as other states provide free voter registration cards the photo  
5 identification cards issued by Indiana's DMV are also free.  
6 Here, the Supreme Court tells us that the relevant burdens are  
7 those imposed on registered voters who lack an acceptable form  
8 of ID. However, where a state provides a free ID, the burden  
9 is not so great as to undermine the state's law. At least, the  
10 Supreme Court continues, with respect to most voters. For most  
11 voters who need them the inconvenience of making a trip to the  
12 DMV, gathering the required documents, and posing for a  
13 photograph surely does not qualify as a substantial burden on  
14 the right to vote or even represent a significant increase over  
15 the usual burdens of voting. So several aspects of Texas' law  
16 make this statement equally true for most Texas voters; you've  
17 already heard about some of them.

18 First is the reduced price of the birth certificate.  
19 It is true that the birth certificate is one of the forms of  
20 identification that might be used to gain a free VIC. Well,  
21 Texas has reduced the price of a birth certificate for those  
22 persons who need one for the sake of obtaining a VIC to two or  
23 three dollars. In Indiana, and *Crawford* discusses this, the  
24 price of a birth certificate was thirteen dollars.

25 The state has also entered into MOUs or Memorandums

1 of Understanding with local county officials to ensure that  
2 rural counties without a DPS office have a permanent VIC  
3 issuing authority in that county. In addition, the Department  
4 of Public Safety and the Secretary of State have partnered  
5 together to create what is called a mobile VIC program.  
6 Essentially this is a mobile VIC issuing office that moves  
7 around the state. It has targeted areas with high  
8 concentrations of -- areas that are believed to have high  
9 concentrations of registered voters who lack requisite ID and  
10 it has targeted rural areas without a permanent DPS office.  
11 These measures show that for most voters without an ID, SB 14  
12 does not prevent an increase over the usual burdens of voting.  
13 In fact, they help ensure that voters without an ID can obtain  
14 one with little trouble or expense.

15           The Supreme Court continues however to further refine  
16 the relevant class of persons that we must look at in  
17 determining whether SB 14 survives legal muster. Both the  
18 evidence in the record and facts of which we may take judicial  
19 notice however indicate that a somewhat heavier burden may be  
20 placed on a limited number of persons. They include elderly  
21 persons born out of state who may have difficulty obtaining a  
22 birth certificate, persons who because of economic or other  
23 personal limitations may find it difficult either to secure a  
24 copy of their birth certificate or to assemble the other  
25 required documentation to obtain a state issued identification,

1 homeless persons, and persons with a religious objection to  
2 being photographed. If we assume as the evidence -- I'm sorry,  
3 it stops there.

4           What this -- this passage instructs the parties and  
5 the Court because it tells us that setting aside their purpose  
6 claim about the legislature's purpose in enacting SB 14 there  
7 are other claims really about identifying registered voters who  
8 lack an acceptable form of ID but whose particular  
9 circumstances require that they bear a heavier burden to obtain  
10 the free ID offer by Texas. All this, despite the  
11 (indiscernible) measures instituted by the state and indeed  
12 this appears to be what the plaintiffs undertake to do but are  
13 ultimately unsuccessful at doing.

14           Before examining the plaintiffs attempts let me point  
15 out several features of Texas law that attempt to accommodate  
16 the specific categories enumerated by the Supreme Court in  
17 *Crawford*.

18           First is the free ID which we've already talked  
19 about. The second is the availability for elderly persons over  
20 the age of 65 to cast their ballot without going to the polls,  
21 without showing an ID, by casting a mail-in ballot. The third  
22 is disabled persons. The Supreme Court recognizes that  
23 disabled persons could find it difficult to get a free ID.  
24 However, disabled persons can apply for and gain an exemption  
25 that allows -- that exempts them from the photo ID requirements



1 in SB 14. Finally, persons with a religious objection are also  
2 not required to comply with Texas' voter ID -- photo ID  
3 requirement.

4 So if I could and it would be impossible for me to  
5 address the 18 or so different experts that the plaintiffs will  
6 present to your Honor, I would like to try and boil down the  
7 evidence and the steps that they take in order to try to prove  
8 up that a certain subset of registered voters without an ID do  
9 bear a heavier burden when it comes to obtaining the free ID.

10 The first step is one that your Honor is very  
11 familiar with; that is, attempting to identify the registered  
12 voters without ID. This is the matching process that was  
13 undertaken by the Department of Justice and Dr. Ansolahehere.  
14 This is the keystone of their case. This is the infamous no  
15 match list. This was the focus of the administrative  
16 preclearance proceeding. This was the focus of the DC core  
17 litigation that ensued after the administrative preclearance  
18 and indeed many of the plaintiffs that you will hear from --  
19 many of the plaintiffs experts from who you will hear from  
20 directly rely on Dr. Ansolahehere's matching efforts.  
21 Plaintiffs offered this list and they described it in the terms  
22 of hundreds of thousands as an accurate picture of the  
23 registered voters who lack acceptable ID, but problems abound,  
24 your Honor.

25 First, there's the reliability of the underlying data

1     itself. Like Indiana, Texas suffers from bloated voter polls  
2     and churn, an inevitable churn in its database. Evidence will  
3     show that there are an unknowable number of records that are  
4     not valid that are contained within Texas' team database or its  
5     registration roles. There's an unknowable number of voters who  
6     are dead, an unknowable number of voters who have moved, and an  
7     unknowable number of voters who for other reasons are  
8     ineligible to vote. Just one quick vignette that is offered by  
9     one of the plaintiffs' experts that will drive this point home.  
10    She tells of a puppet that was registered to vote in a bar I  
11    believe in Dallas County named Yippy (phonetic). This puppet  
12    remained on Texas' voter registration roles for four years  
13    before it was removed and this is just to speak of the  
14    reliability of Texas' team database. The United States has  
15    refused to share its databases so there's no way to know the  
16    reliability of their data when they keep it hidden. We do know  
17    however that getting the team database to talk to the federal  
18    database has proved difficult. Evidence will show that nearly  
19    9,000 team records could not be compared to a Veterans Affairs  
20    database. That means that these 9,000 -- there's no way -- no  
21    way for us to know whether these 9,000 people have a Veterans  
22    Affairs ID.

23           The second problem is that the no match list is not  
24    actually a single list. There are a number of interpretations  
25    and manipulations of that list that exist even within

1 Dr. Ansolahehere's own report. For instance, the overall list  
2 that he provides contains numerous voters over the age of 65.  
3 It contains voters who are eligible for a disability exemption  
4 and it contains an unknown number of voters who are registered  
5 but hardly ever, if ever, actually vote. The propriety of  
6 including these voters in any analysis is dubious. For voters  
7 who are over the age of 65 they can vote by mail. For disabled  
8 voters they can get an exemption from SB 14's photo ID  
9 requirement, and for registered voters who are disinclined to  
10 vote it would be dubious to conclude that a continued pattern  
11 of not voting is attributable to SB 14 and not simply a  
12 continued desire not to vote.

13 This brings us to step two in the process and this is  
14 imputing or inferring race to the list of registered voters who  
15 lack an acceptable form of ID. Even assuming a valid list of  
16 registered voters without acceptable ID could be created;  
17 plaintiffs are next forced to guess as to the race of these  
18 individuals. They pursue primarily two different methods.

19 First, the Department of Justice hired catalyts --  
20 again hired catalyts, a partisan consulting group that limits  
21 its use of its product to progressive projects. The evidence  
22 will show that its proprietary data which the state has not  
23 been allowed to examine is much more reliable in its prediction  
24 that voters are white than in its prediction that voters are  
25 either African American or Hispanic. In fact, when predicting

1 that a voter is a racial minority catalyst isn't much better  
2 than flipping a coin. This evidence -- the evidence will show  
3 that catalyst data may actually overstate the number of  
4 minority voters on the no match list while understating the  
5 number of white voters on the no match list.

6 Plaintiffs also employ something called ecological  
7 regression. In short, plaintiffs attempt to use estimates  
8 regarding the racial and ethnic makeup of the citizen voting  
9 age population in Texas to estimate the racial makeup of the no  
10 match list. Whereas catalysts (indiscernible) virtue was its  
11 attempt to assign race and ethnicity at the individual level,  
12 ecological regression can never tell you the race or ethnicity  
13 of individual voters on the no match list. To do so would  
14 commit the ecological fallacy. Basically, this means that you  
15 cannot use group averages to infer particular characteristics  
16 of individuals. Let me provide an example.

17 Let's assume that 90 percent of lawyers who practice  
18 law in Austin graduated from a Texas law school. From that,  
19 you could not infer that I graduated from a Texas law school  
20 and in fact you'd be wrong to infer even that 90 percent of our  
21 trial team graduated from a Texas law school.

22 Other problems with ecological egression in this case  
23 is -- another major problem with the ecological egression  
24 analysis provided in this case by numerous experts is that it  
25 is essentially an estimate built upon an estimate.

1 Dr. Ansolahehere and others experts rely on what is called the  
2 American Community Survey. These are running estimates that  
3 estimate aspects of the population in Texas over a five -- one,  
4 three, or five year average. These estimates contain their own  
5 inaccuracies and errors with an error rate to go along with it.  
6 Basing an estimate of the racial makeup on the no match list on  
7 an estimate simply compounds the inaccuracies in this baseline  
8 data.

9 In short, your Honor, for a number of reasons, not  
10 the least of which is the apparently poor quality of the team  
11 database, it is a difficult enterprise to examine the data for  
12 correlations between race and photo identification ownership.  
13 Even with good data on both sides and by that I mean an  
14 accurate list of registered voters who lack an ID on the one  
15 hand and a perfect grip of the current citizen voting age  
16 population in Texas on the other hand, it would be a  
17 considerable task to derive conclusive relationships on an  
18 ecological basis.

19 Even if the plaintiffs could prove that certain  
20 voters lack an acceptable ID and even if they could show that  
21 these persons are disproportionally racial and ethnic  
22 minorities *Crawford* says that there's still work to be done.  
23 That's because *Crawford* makes clear that even for most of these  
24 voters obtaining one of the three VIC offered -- identification  
25 cards offered by the State of Texas does not even represent a

1 significant increase over the usual burdens of voting.

2           So under their Section Two claim, your Honor, they  
3 must show that the necessity to get an ID interacts with the  
4 remnants of past discrimination to such a degree that it denies  
5 or bridges their right to vote. Under their *Crawford* claim the  
6 plaintiffs must show that the burden associated with obtaining  
7 a free ID is so high for certain registered voters that it's  
8 not justified by the state's legitimate interests in promoting  
9 election integrity, preventing and deterring voter fraud and  
10 not just in person voter fraud, and modernizing the election  
11 systems in Texas. All three of these interests that are all  
12 over the legislative record in this case are interests that the  
13 Supreme Court has deemed legitimate.

14           Plaintiffs attempt to do this in three general ways.  
15 The first is estimating travel times and distances to various  
16 DPS offices. The second is estimating the economic costs  
17 associated with getting to and from a DPS to get the free VIC,  
18 and the third is estimating that minorities tend to be poor and  
19 they tend to lack access to vehicles to a greater extent than  
20 white voters but there are several problems with this approach.

21           First, as mentioned earlier, most rely on  
22 Dr. Ansolahehere's no match list. Thus, the usefulness of  
23 these calculations are limited by the unreliability of  
24 Dr. Ansolahehere's match list. The unreliability will become  
25 more evident later today.

1           When making the travel times and distances  
2 calculations the experts made assumptions that bias the  
3 results. Just to name one, they calculate generalized travel  
4 times. So average travel times across -- from a single  
5 arbitrary geographic point and at no time do they attempt to  
6 actual -- to calculate actual travel times for the individual  
7 voters that Dr. Ansolahehere has identified as lacking a  
8 required ID.

9           In addition, estimates of poverty and vehicle access  
10 are estimates based upon estimates and they do not show whether  
11 or which voters on the no match list are poor and they do not  
12 show whether or which voters on Dr. Ansolahehere's no match  
13 list lack access to a vehicle.

14           So allow me to summarize. Plaintiffs first attempt  
15 to identify persons without ID and then use estimates to  
16 estimate the race and ethnicity of these persons.

17           Second, plaintiffs attempt to make generalized  
18 estimates regarding travel times and distances, not from the  
19 individuals -- individual voters' homes who they have  
20 identified but from the midpoint of the relevant census  
21 geography unit.

22           Third, plaintiffs attempt to estimate at a general  
23 level the economic costs opposed to the actual dollars and  
24 costs -- dollars and cents spent per whites and African  
25 Americans and Hispanics to obtain an ID. As an aside, at least

1 one expert determines that the cost is actually greater for  
2 white voters than it is for African Americans.

3           Lastly, plaintiffs attempt to estimate at a general  
4 level the relative access of minority voters -- access to  
5 vehicles of minority voters and white voters but nowhere in  
6 this analysis did plaintiffs show, if ever, where these circles  
7 overlap. Per (differently) the plaintiffs never complete their  
8 VIN diagram. They never estimated the number of registered  
9 voters who lack even an acceptable form of ID, and are racial  
10 and ethnic minorities, and suffer the hardship of having to  
11 travel long distances and times to the DPS. They never  
12 estimate the number of registered voters who lack acceptable  
13 forms of ID, and are racial or an ethnic minority, and lack  
14 access to a vehicle, and they never estimate or identify  
15 registered voters who lack acceptable forms of ID, are racial  
16 or an ethnic minority, or -- and are poor, and despite being  
17 given Texas voter registration rolls and ID databases there's  
18 no real face put on this stuff. The very -- the analysis that  
19 they do is done in various silos and it is never connected  
20 together.

21           These generalized differences which build estimates,  
22 upon estimates, upon estimates only serve to obscure the most  
23 telling fact in this case and that is that plaintiffs after  
24 years of searching and even literally shouting their requests  
25 through a loud speaker are having immense difficulty producing



1 a single voter for whom SB 14 represents a heavy burden who  
2 would have difficulty getting in the -- the free VIC.

3 Many of the voters you will hear from can vote by  
4 mail or by applying for a disability exemption. Others have or  
5 could easily obtain the underlying documents to obtain the free  
6 ID offered by the state. This evidence sheds light -- sheds  
7 the light of day on their statistical shell game and it  
8 bolsters the academic literature that demonstrates that voter  
9 ID laws appear to have a dampening -- appear to have no  
10 dampening effect on voter turnout. Moreover, they corroborate  
11 the numerous news reports from the -- after the various  
12 elections in which SB 14 has been implemented that show that SB  
13 14 has been implemented without glitches and without trouble.

14 In short, your Honor, the plaintiffs' evidence  
15 regarding the effects of SB 14 do not show that some voters are  
16 heavily burdened by SB 14 and thus they cannot show that some  
17 voters are heavily burdened on account of or because of their  
18 race or ethnicity either.

19 Next comes the purpose evidence or lack thereof. The  
20 massive legislative record that has been compiled over  
21 successive legislative sessions is clear -- is as clear as it  
22 is consistent.

23 Texas' voter ID law was enacted to improve the  
24 integrity of Texas' election process, to prevent and deter  
25 voter fraud including in person voter fraud and other types of

1 fraud, and act as a backstop for the state's willfully  
2 inaccurate and bloated voter rolls. Each of these purposes was  
3 recognized in *Crawford* as a legitimate purpose that justified  
4 the minor burden it posed for the vast majority of voters but  
5 the evidence will demonstrate yet another explanation for the  
6 enactment of SB 14 and again I would return to the poll that I  
7 showed your Honor earlier this morning.

8           Texas voters overwhelmingly supported the enactment  
9 of voter ID and the testimony will show that the legislature  
10 was aware of this fact and was responding to it.

11           Despite the massive legislative record that spans  
12 several legislative sessions, plaintiffs have gone fishing in  
13 the privileged files of the legislators who supported voter ID.  
14 Plaintiffs have taken an untold number of hours of deposition  
15 testimony from legislators and their staff and have received  
16 thousands of documents that are privileged. In asking for this  
17 unprecedented level of discovery the plaintiffs assured this  
18 Court that such discovery was vital and very, very important to  
19 proving that the law was passed with a discriminatory intent.

20           This week, your Honor, the plaintiffs return to this  
21 courtroom with empty nets. The vital evidence uncovered by the  
22 plaintiffs' month long fishing expedition confirms rather than  
23 contradicts the legislative record. This evidence includes  
24 communications with constituents that do not mention a racially  
25 discriminatory purpose, talking points that confirm the

1 purposes explained in the legislative record, and the most  
2 farfetched of this evidence does not originate from the  
3 legislators, does not mention voter ID, or does neither. In  
4 fact, in these documents race is not even evident on the face  
5 of the documents. Rather, race is found only if one is intent  
6 on finding it there in the first place.

7           Once the door was opened evidence gathered from the  
8 opponents of SB 14 tell a story not of races run amuck at the  
9 state house but of partisan politics that typify nearly all  
10 public policy disagreements. The state uncovered evidence of  
11 the contested -- of the concerted coordinated effort by  
12 opponents of SB 14 to not only defeat voter ID in the  
13 legislature but also lay the foundation for this very lawsuit.  
14 These documents which are still sealed by this Court provide a  
15 simple, nonracial explanation for the legislative procedures  
16 used to pass voter ID and the many individual decisions made by  
17 the lawmakers that supported it.

18           **THE COURT:** All right. Why don't we take about a 15  
19 minute break and then we'll get started with the evidence? I  
20 will probably be standing a lot. It's just there's long days.  
21 So don't mind me when I do.

22           **THE CLERK:** All rise.

23           **(Hearing concluded at 9:43 a.m.)**

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

September 2, 2014

TONI HUDSON, TRANSCRIBER